



MEETING DATE: 8/7/2006  
ITEM NO: 12  
DESK ITEM

### COUNCIL AGENDA REPORT

DATE: AUGUST 7, 2006  
TO: MAYOR AND TOWN COUNCIL  
FROM: ORRY P. KORB, TOWN ATTORNEY *OK*  
SUBJECT: ADOPT RESOLUTION DENYING AN APPEAL OF A PLANNING COMMISSION DECISION DENYING APPROVAL TO CONSTRUCT A NEW SINGLE FAMILY RESIDENCE. APN 527-56-033. ARCHITECTURE AND SITE APPLICATION S-06-022. PROPERTY LOCATION: 107 COLORADO COURT. PROPERTY OWNER/APPLICANT: STEWART AND COLETTE FAHMY

#### DISCUSSION:

Attached is a copy of the resolution which includes amended wording on Page 1 (Item C). Also included is Page 2 which was inadvertently omitted from previously sent copy.

Attachment: Amended Resolution

PREPARED BY: **ORRY P. KORB**  
Town Attorney

OPK:pg

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Reviewed by: *OK* Town Manager *PS* Assistant Town Manager  
\_\_\_\_ Clerk Administrator \_\_\_\_ Finance \_\_\_\_ Community Development

## **RESOLUTION**

### **RESOLUTION DENYING AN APPEAL OF A PLANNING COMMISSION DECISION DENYING APPROVAL TO CONSTRUCT A NEW SINGLE FAMILY RESIDENCE ON PROPERTY ZONED HR-2 ½PROPERTY**

**APN: 527-56-022**

**ARCHITECTURE AND SITE APPLICATION S-06-022**

**PROPERTY LOCATION:107 COLORADO COURT**

**PROPERTY OWNER OWNER/APPLICANT/APPELLANT:  
STEWART AND COLETTE FAHMY**

#### **WHEREAS:**

A. This matter came before the Town Council for public hearing on June 19, 2006, and was regularly noticed in conformance with State and Town law.

B. Council received testimony and documentary evidence from the appellant/applicant and all interested persons who wished to testify or submit documents. Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report dated June 8, 2006, along with subsequent reports and materials prepared concerning this application.

C. The applicant is proposing to construct a 5,775 square foot house with an attached 1,230 square foot garage. The total floor area is 7,005square feet including the garage. There is also 1,875 square feet of covered terraces and porches proposed, adding to the bulk and mass of the house. The proposed house exceeds the maximum allowable floor area ("FAR") of 4,800 square feet, excluding 400 square feet for the garage. The proposed height of the house exceeds 30 feet and thus exceeds the Town wide Zoning Code maximum height of 30 feet and the Hillside Development Standards and Guidelines limit of 25 feet. Also, because the large house proposed for development would be on a slope greater than 30 percent, excessive grading, retaining walls and oak tree removal would be required. Additionally, the project includes a pool to be located on a slope greater than 30 percent in violation of the Town Hillside Development Standards and Guidelines.

D. The application was considered by the Planning Commission on May 10, 2006, which acted to deny the project as not being in compliance with the Hillside Development Standards and Guidelines.

E. The applicant/appellant claims that the Planning Commission erred or abused its discretion because the decision denying the application constitutes illegal reverse spot zoning and because the Hillside Development Standards and Guidelines are ambiguous with regard to floor area because the requirement to be in compliance with all standards and applicable guidelines conflicts with the ability to request an exception.

F. The decision of the Planning Commission was correct.

G. Council finds as follows:

1. The proposed project violates the Hillside Development Standards and Guidelines in that the house and driveway are not sited within the least restrictive development area; the overall square footage exceeds the maximum allowed and the applicant/appellant has failed to justify and exception thereto; the height limitation is exceeded by more than five feet; the proposed amount of development exceeds the capacity of a sensitive hillside lot and the pool is improper on a slope in excess of 30 percent; will result in a significant number of tree removals; will result in excessive grading and will exceed the cut and fill criteria; and will requires extensive and unattractive retaining walls.

2. The proposed project conflicts with policies and implementing strategies of the General Plan including: L.P.8.4 (minimizing grading); L.P.8.8 (tree preservation); L.I.8.10 (conform houses to contours); CD.P.2.3 (avoiding mass grading in new construction); CD.P.2.4 (reducing visible mass); and CD.P.2.6 (hillside landscaping to preserve natural beauty).

3. The decision of the Planning Commission and application of the Hillside Development Standards and Guidelines does not constitute reverse spot zoning. Reverse spot zoning occurs when a land-use decision arbitrarily singles out a particular parcel for different, less favorable treatment than that enjoyed by neighboring parcels. *Penn Central Transp. Co. v. New York City* (1978)

438 U.S. 104, 132. A generally applicable rule applied to a single project does not constitute reverse spot zoning. *San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal. 4th 643, 676. The decision of the Planning Commission was based on the Hillside Development Standards and Guidelines, which apply equally to all development in the hillside areas of the Town.

**RESOLVED:**

1. The appeal of the decision of the Planning Commission on Architectural and Site Application S-06-022 is denied.
2. The decision constitutes a final administrative decision pursuant to Code of Civil Procedure section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such shorter time as required by State and Federal Law.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California on the 7<sup>th</sup> day of August 2006, by the following vote.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR  
TOWN OF LOS GATOS, CALIFORNIA